

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

HARRY A. MORENA,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13368

Trial Court No. 2KB-15-00200CI

NOTICE OF FILING OF EXHIBIT

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

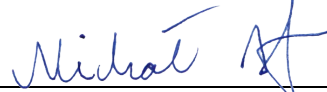
The State of Alaska notifies the Court that it is filing an exhibit to address what it believes is a factual misstatement by Morena in his reply brief. Morena claims that “none of his prior plea agreements involved open sentencing.” [R. Br. 11 (citing R. 339-47)] But the documents Morena cites do not necessarily corroborate Morena’s claim. In fact, his sentencing in 2KB-01-388CR was likely an open sentencing. This is evidenced by the lack of a statement in both the judgment and the presentence report in 2KB-01-388CR that there was an agreement. [R. 130-48, 343-47] Additionally, during the sentencing in 2KB-14-301CR, the probation officer, referring to the presentence report in 2KB-01-388CR, stated, “Where it usually notes any sentencing agreement . . . , I don’t see anything.” [Tr. 206 in 2KB-14-301CR]

To confirm whether indeed there was no sentence agreement in 2KB-01-388CR, the State obtained the log notes from the sentencing in that case. These log notes also suggest that there was no sentence agreement; the State is filing these with the Court. The State has also requested the audio recording from that hearing, which might take some time to obtain because of its age.

The State is not making further argument here, as the point of this filing is to provide notice of the log notes in advance of the oral argument. This Court can take judicial notice of what was said at the sentencing in 2KB-01-388CR. The State plans to address this issue at oral argument next week.

DATED April 20, 2022.

TREG R. TAYLOR
ATTORNEY GENERAL

By: 
Michal Stryszak (0505032)
Assistant Attorney General

In the Superior Court for the State of Alaska at Kotzebue

Media No.: 2KBA-01-229.

Judge: Erlich

Date: Wednesday, November 21, 2001

Clerk: Rmeade

Plaintiff: SOA vs.

Defendant's Name:
Harry Morena

Case No:
2KB-01-209 &
388CR

DOB:
[Enter Deft's DOB]

Address:
[Enter Defendant's Address]

Type of Proceedings: Sentencing

Counsel Present: Plaintiff: District Attorney
Defendant: Public Defender

Defendant: Defendant Present, In Custody

Bail Set/Continues: [Enter Text]		
Transport Order: [Enter Text]		
Other Court Orders: [Enter Text]		
Next Court Date(s) and Time(s): [Enter Date]	Type of Hearing(s): [Enter Hearing Type]	Location: [Enter Location]

Summary of Proceedings:

	On record
11:15:29 AM	Court calls case and states parties present
11:15:44 AM	Court this is a sentencing Mr Morena enter a no contest plea and the state will be dismissing 209Cr court has held extensive hearings and asks if there is anything to add
11:16:45 AM	Parties state no
11:16:53 AM	Court explains that the juvenile history has been added
11:17:19 AM	Probation Officer comments and says that this is going to be a hard decision for the Judge and says that if he lives outside of Kotz it will be hard to monitor He needs a mentor there will be problems on probation
11:18:51 AM	Court asks if he would qualify for a program
11:19:02 AM	Probation Officer says no he would not qualify and says that if he is in Kotz he would have to report on a frequent bases
11:20:37 AM	District Attorney comments about the case and the agreement
11:22:22 AM	Public Defender comments
11:22:36 AM	District Attorney continues with the comments and says that he needs supervision
11:23:54 AM	Public Defender says there are two issues his history and whether he did this and continues
11:24:28 AM	Court understands what she is saying but he has entered a COP and explains
11:25:41 AM	Public Defender explains and continues her comments
11:26:48 AM	Court at this sentencing I have suppressed everything and explains
11:27:27 AM	Public Defender explains her position and could put him on the stand
11:27:52 AM	District Attorney any statements made at the time of the hearing can be used
11:28:27 AM	Public Defender continues to comment the troopers had decided who had done this and they did the investigation that way and comments about his history as a juvenile I do believe the Probation Officer can help him he has never lived outside of Ambler and it would be dangerous for him to return to Ambler but he has no place to live here but has said he would like to get into MAP and makes recommendations

11:36:34 AM Court asks Defendant for statement

11:36:43 AM Defendant says he has tried to remember what happened and is willing to get help for his alcohol program and wants to focus on his life and is sorry for the trouble he has caused

11:37:54 AM Court thought there was a letter from Eve

11:38:13 AM Probation Officer that was for Larry

11:38:22 AM Court speaks to the Defendant about his plea and states that he can rely that he committed the offense and he went through the Cleveland trial and it was similar and they found Steven guilty and I understand that you may not remember but there is something in your statement even though I suppressed and you know that when you imick you get angry at Hazel and it was just as likely that you did it.....the social environment Steven must be a booze making capacity I know that the juvenile system failed you I was very angry about the \$30,000 damage done at the school.....took away the community poser to try to help you and that may have forced you to think

11:43:26 AM Court continues comments to the Defendant now I have got to explain that why I'm going to impose the sentence that I am going to impose given all of your problems and history you are a danger when you drink to yourself and everyone around you looking at everything that is a real risk Public Defender thinks I should let you out now but I view you as a danger and I think there is a benefit for you to understand how serious I see everything that has gone on.

11:45:43 AM Court imposes 5 years ith 3 suspended I have to do that because of the seriousness of the crime and your history and given the fact that the state is dismissing the other charges you were convicted of criminal mischief in the 3rd degree for 0198 criminal trespass \$500 in restitution still owing convicted of assault in the 4th and you received the max given that history and it was all alcohol related you are going to have a difficult life. I'm not sure there is a program available for you

11:49:11 AM Court Probation for 5 years after your release no consumption or possession of alcohol (court explains) must reside in a community that has a resident Probation Officer I'm doing this for two reasons 1 Ambler doesn't have a VPSO and the only place that you can get help is in a community where there is a Probation Officer

11:51:15 AM Court asks Probation Officer what the program is

11:51:29 AM Probation Officer answers

11:51:42 AM Court recommends that he be considered for that program (explains)

11:52:23 AM Court recommends evaluation for substance abuse etc.... follow recommendation of the programs

11:53:29 AM Court explains that he has to make a decision and explains what decision that is

11:56:02 AM Court orders \$100.00 surcharge rule 39 fees \$250.00

11:56:16 AM Public Defender comments

11:56:34 AM Court agrees and will add

11:56:53 AM Public Defender continues to comment about medication

11:57:25 AM Probation Officer does finger printing

11:57:35 AM Court fingerprinting complete witnessed by Kapalco

11:57:40 AM Off record

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CERTIFICATE OF SERVICE AND TYPEFACE

I, Sylva M. Ferry, state that I am employed by the Alaska Department of Law, Office of Criminal Appeals, and that on April 20, 2022, I emailed a copy of the State's NOTICE OF FILING OF EXHIBIT and this CERTIFICATE OF SERVICE AND TYPEFACE in the above-titled case to:

George W. Madeira
Public Defender Agency
900 W. 5th Ave, Ste 200
Anchorage, AK 99501
willy.madeira@alaska.gov

I further certify, pursuant to App. R. 513.5, that the font used in the aforementioned documents is Century Schoolbook 13 point.


Sylva M. Ferry